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Supreme Court of the United States

OCTOBER TERM, 1942.

No. 252.

NATIONAL PROTECTIVE INSURANCE COMPANY,
PETITIONER,

VS.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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INDEX

Petition for Writ of Certiorari

A. Summary Statement of the Matter Involved 2

B. Statement of the Jurisdiction of This Court 6

(1) Statutory provisions believed to sustain the jurisdiction 6

(2) The date of the judgment to be reviewed 6

(3) Statement of the nature of the case and the rulings of the Circuit Court of Appeals bringing the case within the jurisdiction of this Court 7

(4) Cases believed to sustain the jurisdiction of this Court 8

C. Questions Presented 8

D. Reasons Relied On for Allowance of the Writ 8

Conclusion 11

Brief in Support of Petition for Writ of Certiorari

A. Opinions of the Court Below 13

B. Grounds on Which the Jurisdiction of This Court Is Invoked 14

C. Statement of the Case 14

D. Specification of Errors Intended to Be Urged 14

E. Summary of the Argument 17

F. Argument 20

Conclusion 26

Table of Cases

Commissioner of Internal Revenue vs. Monarch Life Insurance Co., (1 C. C. A.) 114 F. 2d 314, 319 ..... 9, 18

Continental Insurance, Inc., vs. United States, (Ct. Cl.) 8 Fed. Supp. 474, 478 ..... 9, 18

Crooks vs. Harrelson, 282 U. S. 55, 63, 75 L. Ed. 156, 177 ..... 10, 19, 24
Forstmann vs. Rogers, (3 C. C. A.) 128 F. 2d 126, l. c. 129 ..... 10-11, 19, 25
Helvering vs. Illinois Life Insurance Co., 299 U. S. 88, 57 S. Ct. 63, 81 L. Ed. 56 ..... 9, 10, 18, 23
Helvering vs. Inter-Mountain Life Insurance Co., 294 U. S. 686, 690, 55 S. Ct. 572, 79 L. Ed. 1227, 1230 ..... 9, 17
Helvering vs. Inter-Mountain Life Insurance Co., 294 U. S. 686, 55 S. Ct. 572, 79 L. Ed. 1227 ..... 9, 10, 18, 22
Lamana-Panno-Fallo Industrial Insurance Co., Inc., vs. Commissioner of Internal Revenue, (5 C. C. A.) 127 F. 2d 56, 59 ..... 10, 18, 21, 23
Maryland Casualty Co. vs. United States, 251 U. S. 342, 350, 40 S. Ct. 155, 64 L. Ed. 297 ..... 9, 17, 20
McCoach vs. Insurance Co. of North America, 244 U. S. 585, 589, 37 S. Ct. 709, 61 L. Ed. 1333, 1336 ..... 9, 17, 24
New York Life Insurance Co. vs. Edwards, 271 U. S. 109, 119, 46 S. Ct. 436, 70 L. Ed. 859, 863 ..... 9, 17, 23
New World Life Insurance Co. vs. United States, (Ct. Cl.) 26 Fed. Supp. 444, l. c. 462, 466 ..... 21, 23, 24
United States vs. Boston Insurance Co., 269 U. S. 187, 46 S. Ct. 97, 70 L. Ed. 232 9

STATUTES

Act of February 13, 1925, Ch. 229, Section 8, 24 Stat. 940 (28 U. S. C. A. 350) 6
Act of February 26, 1926, Ch. 27, Section 1001 (A), as amended June 7, 1934, Ch. 26, 48 Stat. 926 (26 U. S. C. A., Section 1141 (a)) 6
Articles 201 (a)-1 and 203 (a) (2)-1 of Treasury Regulations 86 15
Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711) 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26
Section 203 (a) (2) of the Revenue Acts of 1934 and 1936 15
Section 240 (a) of Judicial Code, as amended by Act of February 13, 1925, Ch. 229, Section 1, 43 Stat. 938 (28 U. S. C. A. 347 (a)) 6

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VS.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To The Honorable The Chief Justice and The Associate Justices of The Supreme Court of the United States:

Your petitioner, National Protective Insurance Company, in support of its petition for a writ of certiorari to review the final judgment of the United States Circuit Court of Appeals for the Eighth Circuit entered June 30, 1942, affirming a decision of the United States Board of Tax Appeals, determining a deficiency in petitioner's income tax during the years 1935 and 1936, respectfully shows:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This proceeding involves alleged income tax deficiencies for the calendar years 1935 and 1936. Proceeding was initiated by a determination of deficiency by the Commissioner of Internal Revenue which was affirmed in findings of fact, opinion and order of redetermination of said tax by the United States Board of Tax Appeals promulgated July 10, 1941 (R. 11, 21; 44 B. T. A. 978), and again redetermined by the United States Board of Tax Appeals upon motion for rehearing on October 2, 1941, not reported (R. 25, 27).

Petitioner is a Missouri insurance corporation, having its principal office in Kansas City, Missouri (Petition, R. 3; Answer, R. 10; Petitioner's Exhibits Nos. 5, 2, 3 and 4, R. 59-69, 53, 55, 57). All of petitioner's business is transacted in the State of Missouri (R. 39).

Petitioner was originally, on November 30, 1926, organized under the provisions of Article 3 of Chapter 37 of the Revised Statutes of Missouri, 1929, relating to "Insurance on the Assessment Plan" (Petition, R. 3; Answer, R. 10; Petitioner's Exhibit 1, R. 51), and during the time petitioner was engaged in business under said statutes, it issued life insurance contracts, health and accident insurance contracts (R. 39).

On April 2, 1932, by amended articles of incorporation, petitioner was reincorporated and authorized to engage in business pursuant to the provisions of Article 4 of Chapter 37, Revised Statutes of Missouri, 1929, relating to insurance on the Stipulated Premium Plan (Petition and Answer, R. 39; Petitioner's Exhibit 5, R. 59-69).

During 1935 and 1936 (the years in question here) and prior thereto, pursuant to its authorization to engage in the insurance business under the provisions of Article 4 of Chapter 37 of the Revised Statutes of Missouri, 1929,

relating to "Insurance on the Stipulated Premium Plan," petitioner issued life contracts and health and accident contracts (R. 39). Petitioner's life policies are non-cancellable and petitioner's health and accident policies are cancellable (R. 39).

Petitioner sets aside a reserve fund to fulfill its life insurance coverage (R. 39; Petitioner's Exhibits Nos. 7, 9 and 11, R. 91-103, 125-137, 159-171). This reserve fund is required by the Missouri law under which petitioner does business (R. 45), and represents the amount which, improved with interest at 3 1/2% per annum, and future premiums, will discharge petitioner's contingent liability on its life insurance coverage upon the basis of The American Experience Table (R. 39). This is admitted (R. 40). It was set up as a liability in petitioner's annual reports to the Missouri Superintendent of Insurance (Petitioner's Exhibits Nos. 6 to 11, inclusive, R. 71-171).

Petitioner also sets up as a liability in its annual reports to the Missouri Superintendent of Insurance an "unearned premium" account (R. 40, Petitioner's Exhibits Nos. 6, 8 and 10, R. 71-89, 105-123 and 139-157). This account represents the unearned portion of the premiums paid petitioner upon its health and accident business (R. 40). It represents that portion of the premium which belongs to the policyholder (R. 42). It cannot be used by petitioner (R. 42). It is created and maintained for the purpose of refunding to policyholders unearned premiums upon cancelled health and accident coverage (R. 43); not for the purpose of reinsurance (R. 43) and it does not involve any calculation based upon contingencies or upon any table of experience (R. 41-42). Nor does it involve any calculation which takes into consideration any interest or earnings or improvement of the fund (R. 40; Finding of Fact in Order of October 2, 1941, promulgated by the Board of Tax Appeals, R. 26).

There is no Missouri statute or law requiring stipulated premium plan companies, such as the petitioner, to

maintain a reserve for health and accident coverage and there is no statute empowering the Missouri Superintendent of Insurance to promulgate rules and regulations with respect to the maintenance of such an account and the unearned premium account of petitioner was not required by express statutory provisions or by rules and regulations of the Missouri Superintendent of Insurance promulgated in the exercise of power conferred by statute (R. 45; Findings of Fact in October 2, 1941, Order, R. 27; Opinion, United States Circuit Court of Appeals, R.).

Petitioner has no other fund which might be regarded as a reserve for its health and accident coverage (R. 40; Petitioner's Exhibits Nos. 6-11, inclusive, R. 71-171, inclusive).

In 1934, petitioner's premium income from its health and accident business was $591,083.75 and from its life business $11,380.35 (R. 44; Petitioner's Exhibit 6, R. 71-89). In 1935, petitioner's premium income from its health and accident business was $636,631.38 and from its life business $11,647.15 (R. 44; Petitioner's Exhibit 8, R. 105-123). In 1936, petitioner's premium income from its health and accident business was $688,001.41 and from its life business $12,911.80 (R. 44; Petitioner's Exhibit 10, R. 139-157).

Petitioner's amended articles of incorporation, entered into on April 2, 1932, and approved by the Missouri Superintendent of Insurance (Petitioner's Exhibit 5, R. 46) provided that petitioner's unearned premium account should be calculated upon the basis of 15% of its aggregate gross premiums (Petitioner's Exhibit 5, R. 46). Fifteen per cent was set up because petitioner only had sufficient money to meet that requirement (R. 46).

On October 14, 1935, petitioner was required by R. E. O'Malley, the Missouri Superintendent of Insurance, to enter into an agreement as a matter of solvency by which petitioner agreed to set up an unearned premium account of 15% of the aggregate gross premiums upon its health

and accident business for the years 1935 and 1936, and then to increase the unearned premium account 5% each year until it reached 50% of the premiums in force (Petitioner's Exhibit 12, R. 173-177).

Petitioner's books are kept on an accrual basis (R. 41).

Respondent, by notice of deficiency, mailed to petitioner on December 12, 1939, determined deficiencies in income taxes from the petitioner in the amount of $10,338.71 for the calendar year 1935 and in the amount of $5,925.21 for the calendar year 1936. A timely petition, appealing from the respondent's determination, was filed by petitioner with the United States Board of Tax Appeals on March 9, 1940. The case was heard on November 13, and 15, 1940. A memorandum, finding of facts and opinion was promulgated by the board on July 10, 1941. Rehearing was granted and opinion and decision rendered redetermining deficiencies in income taxes due from petitioner in the same amounts theretofore determined. Appeal was duly taken by petition for review to the United States Circuit Court of Appeals for the Eighth Circuit, No. 12216, and said Court entered its opinion on June 30, 1942, affirming the decision of the Board of Tax Appeals.

Respondent contends that petitioner's unearned premium account is a reserve on petitioner's health and accident coverage (R. 8 and 9) within the meaning of "total reserve funds" in section 201 (a), Rev. Acts, etc. The Board of Tax Appeals so held and the United States Circuit Court of Appeals so held (R. 189).

Petitioner contends that this account is not a reserve (R. 3) within said section.

If, as the Court below held (R. 189) and as respondent contended, petitioner's unearned premium account is a reserve fund maintained on its health and accident coverage, within the meaning of Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711), petitioner is taxable as

an insurance company other than life or mutual, and the decision of the Circuit Court of Appeals should be affirmed (Petitioner's Exhibits Nos. 6-11, inclusive, R. 71-171). If, as petitioner contends, its unearned premium account is not a reserve fund for the fulfillment of its health and accident contracts, within the meaning of Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711), petitioner's reserves for the fulfillment of its life insurance contracts constitute its only reserves and petitioner is taxable as a life insurance company, in which instance there is no additional tax due and the decision of the Court of Appeals should be reversed.

B.

STATEMENT OF THE JURISDICTION OF THIS COURT.

(1) Statutory provisions believed to sustain the jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, Ch. 229, Section 1, 43 Stat. 938 (28 U. S. C. A. 347 (a)), and under the same Act, Ch. 229, Section 8, 24 Stat. 940 (28 U. S. C. A. 350); and the Act of February 26, 1926, Ch. 27, Section 1001 (A), as amended June 7, 1934, Ch. 26, 48 Stat. 926 (26 U. S. C. A., Section 1141 (a)).

(2) The date of the judgment to be reviewed.

The judgment of the Circuit Court of Appeals for the Eighth Circuit affirming the decision of the Board of Tax Appeals was entered on June 30, 1942 (R. 191). The issuance of the mandate has been stayed pending the granting of this application (R. 193). This petition, with supporting brief, and the certified record are filed within thirty days next after final judgment.

(3) Statement of the nature of the case and the rulings of the Circuit Court of Appeals bringing the case within the jurisdiction of this Court.

The nature of the case (whether petitioner is subject to be taxed as a "life insurance company" or a "company other than life or mutual," within the meaning of Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711)), has been heretofore stated. The Circuit court of appeals ruled (R. 189): (1) that, although petitioner's unearned premium account was not strictly an insurance reserve, that it constituted a reserve within the meaning of the term "total reserve funds" in Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711); (2) that petitioner's unearned premium account, although not "required by law," was nevertheless an insurance reserve set aside under principles of ordinary business prudence; (3) that Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711) provided that an insurance company should be classified according to the predominate type of business done by that insurance company rather than being measured by its reserves; (4) that the term "total reserve funds" within the meaning of Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711) contemplates all reserves or funds of any kind or character set aside as a matter of solvency or protective business prudence even though such reserves or funds bear no relation to insurance and are not "required by law"; (5) that although Congress in enacting Section 201 (a) of the Revenue Acts of 1934 and 1936 stated the measure or rule in determining the character of an insurance company for income tax purposes should be the proportion of its reserves held for the fulfillment of life contracts as against the proportion of its reserves held for the fulfillment of other insurance contracts, that Congress really intended to state that the character

of an insurance company for income tax purposes should be determined by the proportion of its premium income received either from life insurance contracts or from other insurance contracts. Each of such rulings is reviewable by this Court under the appropriate statutory provisions noted.

(4) Cases believed to sustain the jurisdiction of this Court.

This Court is vested with jurisdiction under the statutory provisions heretofore specified. The cases submitted by petitioner as the basis for the exercise of such jurisdiction, to review the judgment below, are cited hereafter in connection with petitioner's reasons for the allowance of the writ of certiorari.

C.

QUESTIONS PRESENTED.

Is petitioner subject to be classified as a "life insurance company," or is it subject to be taxed as an "insurance company other than life or mutual" for income tax purposes within the meaning of Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711).

D.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

(1) In ruling (R. 189) that petitioner's unearned premium account, although not required by law, and although it was not held for the fulfillment of petitioner's health and accident coverage, was a "reserve fund," within the meaning of Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710,

1711), the Circuit Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this Court, namely: *Maryland Casualty Company* v. *United States*, 251 U. S. 342, 350, 40 S. Ct. 155, 64 L. Ed. 297; *Helvering* v. *Inter-Mountain Life Insurance Company*, 294 U. S. 686, 690, 55 S. Ct. 572, 79 L. Ed. 1227, 1230; *McCoach* v. *Insurance Company of North America*, 244 U. S. 585, 589, 37 S. Ct. 709, 61 L. Ed. 1333, 1336; *United States* v. *Boston Insurance Company*, 269 U. S. 187, 46 S. Ct. 97, 70 L. Ed. 232; *New York Life Insurance Company* v. *Edwards*, 271 U. S. 109, 119, 46 S. Ct. 436, 70 L. Ed. 859, 863; and has rendered a decision in conflict with decisions of other Circuit Courts of Appeal on the same matter, namely: *Commissioner of Internal Revenue* v. *Monarch Life Insurance Company*, (1st C. C. A.) 114 F. 2d 314, 319; and with the United States Court of Claims, namely: *Continental Assurance, Inc.*, v. *United States*, (Ct. Cl.) 8 Fed. Supp. 474, 478; or if, contrary to the contention of petitioner, the ruling below is not literally in conflict with the foregoing decisions, it presents an important question of federal law which should be settled by this Court.

(2) In ruling (R. 190, 191) that the term "total reserve funds" within the meaning of Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711) contemplates all reserves or funds of any kind or character set aside as a matter of solvency or protective business prudence even though such reserves or funds bear no relation to insurance and are not "required by law," the Circuit Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this court, namely, *Helvering* v. *Illinois Life Ins. Co.*, 299 U. S. 88, 57 S. Ct. 63, 81 L. Ed. 56; *Helvering* v. *Inter-Mountain Life Ins. Co.*, 294 U. S. 686, 55 S. Ct. 572, 79 L. Ed. 1227, and in conflict with decisions of other Circuit Courts of Appeal, namely, *Commissioner of Int. Rev.* v. *Monarch Life Ins.*

Co., 114 F. 2d 314; *Lamana-Panno-Fallo Industrial Ins. Co.*, v. *Commissioner of Internal Revenue*, (5 C. C. A.) 127 F. 2d 56, 59.

(3) In holding that although petitioner's unearned premium account was set up as a matter of "protective business prudence," and although it is and was purely a matter of solvency, set up to prevent the impairment of the company (R. 173) that said unearned premium account was a reserve within the meaning of the term "total reserve funds" as used in Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711), the Court of Appeals has decided an important federal question in a way probably in conflict with applicable decisions of this Court, namely: *Helvering* v. *Illinois Life Ins. Co.*, 299 U. S. 88, 57 S. Ct. 63, 81 L. Ed. 56; *Helvering* v. *Inter-Mountain Life Ins. Co.*, 294 U. S. 686, 55 S. Ct. 572, 79 L. Ed. 1227. Or if not literally in conflict therewith, the Circuit Court of Appeals has decided an important federal question which has not been, but which should be decided by this Court.

(4) In ruling that although Congress in enacting Section 201 (a) of the Revenue Acts of 1934 and 1936 stated the measure or rule in determining the character of an insurance company for income tax purposes should be the proportion of its reserves held for the fulfillment of life contracts as against the proportion of its reserves held for the fulfillment of other insurance contracts, that Congress really intended to state that the character of an insurance company for income tax purposes should be determined by the proportion of its premium income received either from life insurance contracts or from other insurance contracts, the court below decided an important question of federal law in a manner probably in conflict with decisions of this court, namely, *Crooks* v. *Harrelson*, 282 U. S. 55, 63, 75 L. Ed. 156, 177, and with decisions of other courts of appeal, namely, *Forstmann* v.

Rogers, (3 C. C. A.) 128 F. 2d 126, in that the court below in attempting to construe Section 201 (a) of the Revenue Acts of 1934 and 1936 judicially substituted for the plain and unambiguous language of Congress its own language and rewrote Section 201 (a) of the Revenue Acts of 1934 and 1936, thus encroaching upon the legislative power of Congress.

Conclusion.

The question presented and the rulings whereunder such question was decided by the Circuit Court of Appeals are of grave public importance. Unless the decision below is reviewed, the law relating to the definition and classification of life insurance companies, for income tax purposes, as measured by their "reserve funds" will be left in confusion. The question is one of fundamental importance, which, in the public interest, should be determined by this Court.

Wherefore, your petitioner prays that a Writ of Certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding said Court to certify and send to this court a full and complete transcript of record and of the proceedings of said United States Circuit Court of Appeals in the case numbered and entitled on its docket number 12216, *National Protective Insurance Company, petitioner,* v. *Commissioner of Internal Revenue, respondent,* to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes of the United States; and that the judgment of said Circuit Court of Appeals be reversed by this Court; and your petitioner prays that the certified copy of the record and proceedings of said United States Circuit Court of Appeals for the Eighth Circuit filed with this petition may be treated as a return to said Writ of Certiorari; and your petitioner prays that it may have such other and

further remedies in the premises as to the Court may seem appropriate and in conformity with law.

National Protective Insurance Company,
Petitioner,

JAMES P. AYLWARD,
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OCTOBER TERM, 1942.

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NATIONAL PROTECTIVE INSURANCE COMPANY,
PETITIONER,

VS.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

A.

OPINIONS OF THE COURT BELOW.

The opinion of the Circuit Court of Appeals for the Eighth Circuit, filed June 30, 1942, is not as yet officially reported (R. 183-191). The opinion of the United States Board of Tax Appeals, rendered on July 10, 1941, is reported in 44 B. T. A. 978. The opinion of the United States Board of Tax Appeals, rendered on October 2, 1941, on motion for rehearing, is not reported (R. 25-27).

B.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The statement of the grounds on which the jurisdiction of this Court is invoked appears as part of the foregoing Petition for Writ of Certiorari (Statement of the Jurisdiction of this Court, *supra*, p. 6 *et seq.*), and is hereby adopted and made a part of this brief.

C.

STATEMENT OF THE CASE.

The statement appears as part of the foregoing Petition for Writ of Certiorari (Summary Statement of the Matter Involved, *supra*, p. 2, *et seq.*), and is adopted and made a part of this brief.

D.

SPECIFICATION OF ERRORS INTENDED TO BE URGED.

(1) The Circuit Court of Appeals erred in holding that the term "total reserve funds," within the meaning of Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711), contemplated all reserves or funds of any kind or character set aside as a matter of "protective business prudence" or for "competitive purposes" (R. 189), and in holding that said term "total reserve funds" included "prudent and applicable reserves" set up by reason of the established necessary and accepted standards for conducting the business, even though such funds or "reserves" were not required by law, had no relation to insurance, were not true insurance reserves and did not meet the standard of true insurance reserves.

(2) The Court erred (R. 189) in holding that petitioner's unearned premium account was a reserve with-

in the meaning of the term "total reserve funds" as used in Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711).

(3) The Court erred in holding (R. 189-191) that the term "reserve funds" in Section 203 (a) (2) of the Revenue Acts of 1934 and 1936, and in Articles 201 (a)-1 and 203 (a) (2)-1 of Treasury Regulations 86, promulgated under the Revenue Act of 1934 and Treasury Regulations 94, promulgated under the Revenue Act of 1936, intended to serve a different purpose than the term "reserve funds" as used in Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711).

(4) The Court erred in holding (R. 189) petitioner's unearned premium account was a reserve within the meaning of the term "total reserve funds" as used in Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711), even though said unearned premium account was not held for the fulfillment of health and accident contracts.

(5) The Court erred in holding in effect (R. 187) that it was the intent of Congress, in enacting Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711), to classify an insurance company as a "life insurance company" or a "company other than life or mutual" by using the measure of the total premium income derived from the two classes of business written by said company rather than measured by the ratio of the insurance reserves held for each class of business.

(6) The Court, upon the basis of facts found by the Board of Tax Appeals and in the agreed statement of evidence, namely (a) that the unearned premium account upon petitioner's health and accident coverage was not based upon a table of contingency or experience; (b)

that said unearned premium account did not take into consideration earnings or interest on the fund; and (c) that said unearned premium account was not used to pay contingent claims when the contingency insured against occurred, erred in holding (R. 189) (a) that petitioner's unearned premium account upon its health and accident coverage was a reserve fund within the meaning of Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711); (b) that the petitioner, for the taxable years 1935 and 1936, held reserve funds maintained on its health and accident coverage which comprised more than fifty per cent of its total reserve funds; (c) that petitioner, for the calendar years 1935 and 1936, was not taxable as a life insurance company within the meaning of Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711), and (d) that there was a deficiency in income taxes due from petitioner during said calendar years.

(7) The Court erred in holding (R. 188) that, although petitioner's unearned premium account was set up as a matter of "protective business prudence," and although it is and was purely a matter of solvency, set up to prevent the impairment of the company (R. 173); that said unearned premium account was a reserve within the meaning of the term "total reserve funds" as used in Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711).

(8) The court erred in holding that although Congress in enacting Section 201 (a) of the Revenue Acts of 1934 and 1936 stated the measure or rule in determining the character of an insurance company for income tax purposes should be the proportion of its reserves held for the fulfillment of life contracts as against the proportion of its reserves held for the fulfillment of other insurance contracts, that Congress really intended to state that the character of an insurance company for in-

come tax purposes should be determined by the proportion of its premium income received either from life insurance contracts or from health and accident contracts.

E.

SUMMARY OF THE ARGUMENT.

I.

The opinion below in ruling (R. 189) that petitioner's unearned premium account, although not required by law, *i. e.*, by "express statutory provisions or by rules and regulations of the insurance department of the State of Missouri promulgated in the exercise of a power conferred by statute" (R. 27), and although it was not held for the fulfillment of petitioner's health and accident coverage, was a "reserve fund" within the meaning of the term "total reserve funds" in Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711), the Circuit Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this court, namely:

Maryland Casualty Co. v. *United States*, 251 U. S. 342, 350, 40 S. Ct. 155, 64 L. Ed. 297;

Helvering v. *Inter-Mountain Life Insurance Co.*, 294 U. S. 686, 690, 55 S. Ct. 572, 79 L. Ed. 1227, 1230;

McCoach v. *Insurance Co. of North America*, 244 U. S. 585, 589, 37 S. Ct. 709, 61 L. Ed. 1333, 1336;

United States v. *Boston Insurance Co.*, 269 U. S. 187, 46 S. Ct. 97, 70 L. Ed. 232;

New York Life Insurance Co. v. *Edwards*, 271 U. S. 109, 119, 46 S. Ct. 436, 70 L. Ed. 859, 863;

and has rendered a decision in a way probably in conflict with decisions of other Circuit Courts of Appeal on the same matter, namely:

> *Commissioner of Internal Revenue* v. *Monarch Life Insurance Co.*, (1 C. C. A.) 114 F. 2d 314, 319;

and with the United States Court of Claims, namely:

> *Continental Insurance, Inc.*, v. *United States*, (Ct. Cl.) 8 Fed. Supp. 474, 478;

or if, contrary to the contention of petitioner, the ruling below is not literally in conflict with the foregoing decisions, it presents an important question of federal law which should be settled by this court.

II.

The opinion below in ruling that the term "total reserve funds" within the meaning of Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711) contemplates all reserves or funds of any kind or character set aside as a matter of solvency or protective business prudence and set up as a liability of petitioner, even though such reserves or funds bear no relation to insurance, are not "required by law," and are not held for the fulfillment of any insurance contract. The Circuit Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this court, namely:

> *Helvering* v. *Illinois Life Insurance Co.*, 299 U. S. 88, 57 S. Ct. 63, 81 L. Ed. 56;
>
> *Helvering* v. *Inter-Mountain Life Insurance Co.*, 294 U. S. 686, 55 S. Ct. 572, 79 L. Ed. 1227;

and in conflict with decisions of other Circuit Courts of Appeal, namely:

> *Lamana-Panno-Fallo Industrial Insurance Co., Inc.*, v. *Commissioner of Internal Revenue*, (5 C. C. A.) 127 F. 2d 56, 59.

III.

The opinion below in construing Section 201 (a) of the Revenue Acts of 1934 (48 Stat. 680, 731) and 1936 (49 Stat. 1648, 1710, 1711) disregarded the plain, unambiguous terms used by Congress and substituted for the measure therein contained (proportionate amounts of reserves), its own judgment that the measure should be the proportionate amounts of premium income received from the two types of insurance business done by an insurance company, thereby encroaching upon the legislative power of Congress and deciding an important question of federal law in a way probably in conflict with an applicable decision of this court, namely:

> *Crooks* v. *Harrelson*, 282 U. S. 55, 63, 75 L. Ed. 156, 177.

and in other courts of appeal:

> *Forstmann* v. *Rogers*, (3 C. C. A.) 128 F. 2d 126.

F.

ARGUMENT.

I.

Petitioner contends that the opinion below is in conflict with the plain, unambiguous language of applicable decisions of this court in its construction and interpretation of the meaning of the term "total reserve funds" as used in Section 201 (a) of the Revenue Acts of 1934 and 1936.

In identical language Section 201 (a) in the Revenue Acts of both 1934 and 1936 provides:

> "Definition. When used in this title the term 'life insurance company' means an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health and accident), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 percentum of its total reserve funds."

The term reserve funds has been given and should be given its plain, ordinary meaning, as in *Maryland Casualty Co.* v. *United States*, 251 U. S. 342, 350, 40 S. Ct. 155, 64 L. Ed. 297, 302, the court said:

> "The term 'reserve' or 'reserves' has a special meaning in the law of insurance. While its scope varies under different laws, in general it means a sum of money, variously computed or estimated, which, with accretions from interest, is set aside, 'reserved,' as a fund with which to mature or liquidate, either by payment or reinsurance with other companies, future unaccrued and contingent claims, and claims accrued, but contingent and indefinite as to amount or time of payment."
>
> * * * * * * *
>
> "Reserves, as we have seen, are funds set apart as a liability in the accounts of a company to provide for the payment or reinsurance of specific, contingent lia-

bilities. They are held not only as security for the payment of claims, but also as funds from which payments are made."

Section 201 (a) in its entirety deals with technical insurance reserves, *New World Life Insurance Co.* v. *United States,* (Ct. Cl.) 26 Fed. Supp. 444. While the opinion below cited the above case and quoted a phrase purely dictum, that "Section 201 (a) was enacted for the purpose of taxing insurance companies according to the predominant kind of insurance issued by then," such statement is not shown to have any foundation. That court said, l. c. 462, in speaking of Section 201 (a):

> "This section was dealing only with technical insurance reserves, rather than with the total of such reserves plus reserves for pure liabilities."

"Reserves" as used in one section has the same meaning as "reserves" used in another section, and the term "reserve funds" used in one section must have its plain, ordinary meaning when used in another section. Thus in *Lamana-Panno-Fallo Industrial Insurance Co., Inc.*, v. *Commissioner of Internal Revenue,* (5 C. C. A.) 127 F. 2d 56, the court said, l. c. 58:

> "The tax officer is bound to see that the deduction claimed is based on reserves 'required by law,' as contrasted with voluntary reserves sought to be used as a basis of deduction. He is also concerned to examine the reserves under Section 201 to be sure the taxpayer is a life insurance company at all, for that section defines a life insurance company as one whose reserve funds held for the fulfillment of its life insurance and annuity contracts comprise more than 50 percentum of its total reserve funds. The company, if doing other business than life insurance and annuity, and setting up reserves for this other business, must have the major portion of its reserves held for its life insurance and annuity contracts, in order to be taxed as a life insurance company. The regulation, article 201, very reasonably imports from Section 203 the qualification 'required by law,' so that

> a voluntary increase in those reserves can not be used to make into a life insurance company a company which otherwise would not be such."

As thus seen the term "total reserve funds" means technical insurance reserves, reserve funds required by law. It cannot mean some asset of a company set aside for a particular purpose such as solvency, not pertaining to insurance, but set up to meet some other liability.

The court below has disregarded all of the definitions of "reserves" and "reserve funds" in decisions of this court and other courts of appeal, and has attempted to include within the term "total reserve funds" any and all assets held by a company against any liability, even though such liability is not a future unaccrued contingent liability but is a definite and accrued liability. It is submitted that for this reason alone this court should grant certiorari upon the obvious conflict with applicable decisions of this court and other courts of appeal, and unless the opinion below is reviewed by this court the meaning of Section 201 (a) of the Revenue Acts of 1934 and 1936 will be undetermined.

II.

The gist of the opinion below is that all of the assets of an insurance company maintained as a matter of protective business prudence, possible competitive purposes (R. 189), set up on generally established business and accepted standards for conducting the business, are reserve funds within the meaning of the term "total reserve funds" of Section 201 (a). This holding is plainly in conflict with the case of *Helvering* v. *Inter-Mountain Life Insurance Co.*, 294 U. S. 686-690, 79 L. Ed. 1227, 1230, decided by this court April 1, 1935, wherein it was stated:

> "* * * 'Reserve funds' may not reasonably be deemed to include values that do not pertain directly to insurance."

and in conflict with *Helvering* v. *Illinois Life Insurance Co.*, 299 U. S. 88, 57 S. Ct. 63, 81 L. Ed. 56, wherein the court stated, l. c. 90:

> "The phrase 'required by law' includes only reserves that directly pertain to life insurance. Other reserves, even though required by state statutes regulatory to the business authorized to be carried on by life insurance companies, are not included."

It has been shown that the term "total reserve funds" as used in Section 201 (a) of the Revenue Acts of 1934 and 1936 contemplate reserves required by law, technical insurance reserves, or those directly pertaining to insurance; that it does not contemplate reserves or reserve fund or funds held to meet other liabilities; that it does not include solvency reserves.

The petitioner's unearned premium account was set up purely as a matter of solvency. It was a "voluntary reserve." *Lamana-Panno-Fallo Industrial Insurance Co., Inc.*, v. *Commissioner of Internal Revenue*, (5 C. C. A.) 127 F. 2d 56, 59. It was not required by law, was not a technical insurance reserve, did not pertain directly or indirectly to insurance, was set up (R. 43) from which to repay the unearned premium to policy holders upon cancellation. In the case of *New World Life Insurance Co.* v. *United States*, 26 F. Supp. 444, 466, the court said, l. c. 462:

> "If the term 'total reserve funds' refers to and includes the company's total *liabilities* for which all state laws require insurance companies to hold reserves, the definition would be rendered useless."

To the same effect *New York Life Insurance Co.* v. *Edwards*, 271 U. S. 109-121, 70 L. Ed. 859, 863, the court said, l. c. 120:

> "The term 'reserve funds' in the taxing act has a technical meaning. The compensation which an insurance company agrees to pay soliciting agents

> has no relation to the reserve held to meet maturing policies; and when it sets aside a fund to provide payments to such agents this cannot be regarded as a reserve within intendment of the statute."

The fact that the fund was designated as "unearned premium reserve" by the Missouri Superintendent of Insurance is no indication of the character of the fund. *McCoach* v. *Insurance Co. of N. A.*, 244 U. S. 585, 61 L. Ed. 1333, 37 S. Ct. 709.

III.

Congress in enacting Section 201 (a) of the Revenue Acts of 1934 and 1936 plainly and clearly stated that a company for income tax purposes would be considered a life company if the reserves held for the fulfillment of life contracts comprised more than 50 percentum of its total reserve funds. Congress did not state that if more than 50 percent of a company's premium income was derived from health and accident business that it could not be taxed as a life company. It did not provide that if more than 50 percent of its premium income was derived from life business that it would be a life company. Had Congress intended to say that the measure by which a life insurance company would be classified would be the proportionate amount of its premium income Congress could plainly have so provided. It did not. The court in its construction of Section 201 (a) has substituted words not contained in the statute by enlarging and broadening the meaning of the term "total reserve funds" to encompass any and all assets set aside to meet any liability of an insurance company, seizing upon that phrase contained in the opinion in the case of *New World Life Insurance Company* v. *United States*, that "Section 201 (a) quoted above was enacted for the purpose of taxing insurance companies according to the predominant kind of insurance issued by them." This means premium income. As was so aptly stated by this court in the case of *Crooks* v. *Harrelson*, 282 U. S. 55, 63, 75 L. Ed. 156, 177, at l. c. 60:

"Courts have sometimes exercised a high degree of ingenuity in the effort to find justification for wrenching from the words of the statute a meaning which they literally did not bear in order to escape consequences thought to be absurd or to entail great hardship. But an application of the principle so nearly approaches the boundary between the exercise of the judicial power and that of the legislative power as to call rather for great caution and circumspection in order to avoid usurpation of the latter. *Monson* v. *Chester*, 22 Pick. 385, 387. It is not enough merely that hard and objectionable or absurd consequences, which probably were not within the contemplation of the framers, are produced by an act of legislation. Laws enacted with good intention, when put to the test, frequently, and to the surprise of the law maker himself, turn out to be mischievous, absurd or otherwise objectionable. But in such case the remedy lies with the law-making authority and not with the courts."

And in *Forstmann* v. *Rogers*, (3 C. C. A.) 128 F. 2d 126, at l. c. 129, the court summed up the same situation in the following language:

"The task of a judge called upon to construe a statute is frequently a difficult and delicate one. It is distasteful to him to have to hold that the legislative branch has failed to include in a statute a provision obviously desirable. It is much easier for him to yield to the temptation to supply the omission by doing a little legislating himself under the guise of construing the statute. The temptation is particularly great where, as here, it is quite likely that the legislature would have provided for the case if it had thought of it and where, as here also, the public revenues suffer by the omission. But judges must set themselves firmly against such action in a case such as this where to do so would involve rewriting the statute, not construing it. Under our constitutional arrangements such an amendment is solely within the Congressional province and completely outside the judicial sphere. An encroachment by the judiciary upon the legislative power may, in a case such as this, be ap-

> plauded at the moment as a saving of legislative time and public revenue, but it must be resisted the more stoutly since as a usurpation of power, even though well intentioned, it carries within itself the seeds of future tyranny."

The court below rewrote Section 201 (a). The opinion writes Section 201 (a) to read: "the character of an insurance company shall be determined by the proportionate amount of its premium income derived from its life insurance coverage or its coverage on health and accident insurance," and we submit with all respect that the court below has succumbed to the temptation to "do a little legislating itself" and to substitute for the judgment of Congress its judgment. The manner in which the court decided this cause was directly and plainly in conflict with the rule laid down in the above cases.

Conclusion.

Petitioner respectfully submits that the rulings contained in the opinion below are plainly in conflict with applicable decisions of this court and with decisions of other courts of appeal. The question presented and the rulings of the court of appeals upon that question are of grave public importance. Unless the opinion below is reviewed, the law relating to the definition and classification of life insurance companies for income tax purposes as measured by their "reserve funds" will be left in confusion and chaos. The question, one of fundamental importance, should in the public interest be determined by this court, and the orderly administration of justice can only be subserved by the review sought by petitioner.

Respectfully submitted,

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Argument	5
Conclusion	8
Appendix	10

CITATIONS

Cases:	
Aetna Ins. Co. v. *Hyde*, 34 F. (2d) 185	7
Helvering v. *Oregon Ins. Co.*, 311 U. S. 267	5
State ex rel. v. *Gehner*, 320 Mo. 691	7
State ex rel. v. *Hyde*, 315 Mo. 681	7
State ex rel. v. *Revelle*, 257 Mo. 529	7
Statutes:	
Revenue Act of 1934, c. 277, 48 Stat. 680:	
Sec. 201	10
Sec. 202	10
Sec. 203	10
Sec. 204	11
Revenue Act of 1936, c. 690, 49 Stat. 1648:	
Sec. 201	12
Sec. 202	12
Sec. 203	12
Sec. 204	12
Revised Statutes of Missouri, 1929, Vol. I, c. 37, Art. 1:	
Sec. 5670	7, 12
Sec. 5671	7, 12
Sec. 5680	7, 12
Sec. 5684	7, 13
Revised Statutes of Missouri, 1929, Vol. I, c. 37, Art. 4:	
Sec. 5762	7, 13
Sec. 5778	7, 14
Miscellaneous:	
Regs. 86, Art. 201 (a)-1	8

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 252

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

OPINIONS BELOW

The original opinion of the Board of Tax Appeals (R. 11–21) is reported at 44 B. T. A. 978; its subsequent opinion on rehearing (R. 25–27) is not officially reported. The opinion of the Circuit Court of Appeals (R. 183–191) is not yet officially reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 30, 1942 (R. 191). The petition for a writ of certiorari was filed July 24,

1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, for purposes of income taxation, the petitioner during the years 1935 and 1936 was a "life insurance company" as defined by Section 201 (a) of the Revenue Acts of 1934 and 1936, and entitled to be taxed as such.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra*, pp. 10–14.

STATEMENT

The facts, as found by the Board of Tax Appeals (R. 12–15, 25–27), may be stated as follows:

The petitioner, a Missouri corporation, was organized in 1926 and thereafter was engaged, under the provisions of Article 3 of chapter 37 of the Revised Statutes of Missouri, 1929, in the business of issuing life, health, and accident insurance on the "assessment plan." In 1932 it was reincorporated and authorized to issue such insurance on the "stipulated premium plan" under Article 4 of that chapter of the Missouri statutes. (R. 12).

The petitioner's amended articles of incorporation (Ex. 5, R. 59–69) provided, among other things, that irrespective of the absence of any

statutory requirement for reserves on accident and health business, a reserve be established on health and accident policies of not less than 15% of the total premiums in force on such policies, in addition to a reserve on life policies as required by statute (R. 12–13).

During the taxable years 1935 and 1936, all of the petitioner's business was transacted in Missouri. It issued life policies and health and accident policies. The latter were cancellable either by petitioner or by the insured (R. 13).

As required by Missouri statute, the petitioner set aside a reserve on its life policies calculated on the American Experience Table at 3½%, which reserve amounted to $8,337.49, $10,037.89, and $11,841.29 on December 31 of 1934, 1935, and 1936, respectively (R. 13, 39–40; Ex. 7, R. 91–103; Ex. 9, R. 125–137; Ex. 11, R. 159–171).

On October 4, 1935, the petitioner entered into an agreement with the Superintendent of Insurance of the State of Missouri (Ex. 12, R. 173–177), in which it was recited that an examiners' report disclosed impairment of the petitioner due to its computation of unearned premium reserves on the method prescribed in its articles of incorporation, which method was at variance with the formula generally accepted and used by other insurance companies doing a like business, and that the Superintendent of Insurance desired that petitioner maintain unearned premium reserves

equivalent to those of other companies doing a like business in the state, which petitioner, wishing to operate in the state, was likewise desirous of doing. In that agreement, the petitioner agreed to increase its unearned premium reserve on its health and accident or health or accident business to 20% of the gross premiums in force on December 31, 1935, and thereafter to increase it by 5% each year, so that it would amount to 50% of the gross premiums in force by the end of 1941. (R. 13–14, 27.)

In its annual report to the Superintendent of Insurance for 1934 (Ex. 6, R. 71–89), the petitioner listed among its liabilities (at line 25A, R. 81) a "Special Reserve" of $74,459.53, explaining it as the reserve, amounting to 15% of premiums in force on accident and health policies, maintained in accordance with its amended articles of incorporation. In its annual reports for 1935 (Ex. 8, R. 105–123) and 1936 (Ex. 10, R. 139–157), the petitioner listed among its liabilities (at line 25A, R. 115, 149) the respective amounts of $98,622.87 and $121,114.45, describing each as "Special Reserve in accordance with agreement entered into Oct. 14, 1935 [October 4, 1935], with Mo. Ins. Dept." (R. 15). This unearned premium reserve of the petitioner was not based upon a table of contingency or experience, did not take into consideration earnings or interest on the fund, was not used to pay contingent claims when the contingency insured against occurred,

and was not required by any express statutory provisions of the State of Missouri or rules and regulations of the state Insurance Department promulgated in the exercise of a power conferred by statute. (R. 26–27.)

The petitioner's premium income from health and accident business was $590,802.68, $636,474.03 and $658,842.02 in 1934, 1935, and 1936, respectively. Its premium income from life business for those years was $11,738.40, $11,647.15 and $12,911.80, respectively. (R. 15.)

The petitioner reported its income and computed its tax under the provisions of the revenue law relating to life insurance companies. The Commissioner, however, determined that the petitioner was taxable as an insurance company other than life or mutual, and accordingly asserted tax deficiences for 1935 and 1936. (R. 6–9.) The Board sustained the Commissioner (R. 11–21, 25–27), and the court below affirmed (R. 183–191).

ARGUMENT

The decision below to the effect that the petitioner was not a "life insurance company" within the meaning of Section 201 (a) of the Revenue Acts of 1934 and 1936 is correct, and presents neither a conflict nor a question of general importance.

Under the revenue acts, life insurance companies have long enjoyed favored treatment (cf. *Helvering* v. *Oregon Ins. Co.*, 311 U. S. 267, 268–269); and in order to make sure that such

favored treatment would be accorded only to companies whose business was primarily life insurance, Section 201 (a) defines a life insurance company as one engaged in the business of issuing life insurance and annuity contracts, "the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds." In the case of this petitioner, the reserves for life insurance were approximately between $8,000 and $12,000 in each of the three years involved, whereas its reserves with respect to its other insurance business ranged from about $74,000 to $121,000 in those years. It is thus apparent that life insurance was only a minor part of petitioner's business and that it failed to qualify as a life insurance company under Section 201 (a).[1] The reserve funds held for the fulfillment of its life insurance contracts comprised far less than 50 percent of its "total reserve funds."

Petitioner, however, contends that the reserves for its nonlife insurance business were merely set up in pursuance of an arrangement with the State

[1] The result here is strikingly confirmed by the fact that the annual premiums received by petitioner from its life insurance business did not exceed $13,000 in any one of the three years involved, whereas its premium income from nonlife insurance was nearly $600,000 in one of the years and in excess of $600,000 in the other two years. (R. 15.) Thus, measured by its premiums, its life insurance business constituted only about 2 percent of its total business.

Superintendent of Insurance and do not represent technical insurance "reserves required by law." Accordingly, it urges that those reserves must be excluded from its "total reserve funds" under Section 201 (a), and that upon such exclusion, there is left only its life-insurance reserve, with the consequence that the life-insurance reserve thereby comprises 100 percent of its "total reserve funds." The pivotal error in petitioner's position is that it seeks to qualify the term "total reserve funds" with the requirement that such reserves be "required by law." No such limitation appears in Section 201 (a).[2] It is true that in allowing a deduction in Section 203 (a) (2) of a fixed percentage of a company's reserves, Congress has carefully restricted the deduction so that it may be computed only upon the basis of reserves "required by law." But the deduction granted by Section 203 comes into play only after it has already been determined that the taxpayer is a "life insurance company" under Section 201 (a). And

[2] Moreover, the nonlife insurance reserves here involved were established pursuant to an agreement with the Missouri Superintendent of Insurance who deemed them essential to the proper conduct of its business and the protection of its policy holders. See Sections 5670, 5671, 5680, 5684, 5762, and 5778 of the Revised Statutes of Missouri. (Appendix, *infra*. See also *State ex rel.* v. *Hyde*, 315 Mo. 681, 690; *State ex rel.* v. *Revelle*, 257 Mo. 529, 535; *Aetna Ins. Co.* v. *Hyde*, 34 F. (2d) 185, 198–199 (W. D. Mo.); *State ex rel.* v. *Gehner*, 320 Mo. 691.

the term "total reserve funds" in Section 201 (a) embraces all types of insurance reserves, whether or not required by law.[3]

Most of the decisions relied upon by petitioner deal, not with Section 201, but with the provisions of Section 203 or like provisions in earlier revenue acts and are concerned with the amount of the deduction allowable. None of the cases cited holds that the phrase "total reserve funds" in Section 201 (a) is limited by the term "required by law" in Section 203 (a) (2). The decision below is therefore not in conflict with any of the cases relied upon by petitioner.

CONCLUSION

The court below correctly interpreted the statute and applied it to the facts of the case. There is no conflict of decisions, and no question of general importance calling for a review by this Court is

[3] A life insurance company may take a deduction under Section 203, measured by its reserves "required by law." The purpose of Section 201 (a), however, was to single out for such special treatment only those companies more than 50 percent of whose reserves could qualify for the deduction under Section 203 (a). Accordingly, the Treasury Regulations properly construe Section 201 (a) as referring only to those life insurance reserves falling within Section 203 (see Regulations 86, Art. 201(a)-1); but in order to determine whether the taxpayer can qualify under Section 201 (a), those life insurance reserves must be more than 50 percent of its "total reserve funds," whether or not the latter are comprehended within Section 203.

presented. The petition should, therefore, be denied.

Respectfully submitted.

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AUGUST 1942.

APPENDIX

Revenue Act of 1934, c. 277, 48 Stat. 680:

SUPPLEMENT G—INSURANCE COMPANIES

SEC. 201. TAX ON LIFE INSURANCE COMPANIES.

(a) *Definition.*—When used in this title the term "life insurance company" means an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds.

* * * * *

SEC. 202. GROSS INCOME OF LIFE INSURANCE COMPANIES.

(a) In the case of a life insurance company the term "gross income" means the gross amount of income received during the taxable year from interest, dividends, and rents.

* * * * *

SEC. 203. NET INCOME OF LIFE INSURANCE COMPANIES.

(a) *General Rule.*—In the case of a life insurance company the term "net income" means the gross income less—

* * * * *

(2) *Reserve Funds.*—An amount equal to 4 per centum of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, except that in the case of any such reserve fund

which is computed at a lower interest assumption rate, the rate of 3¾ per centum shall be substituted for 4 per centum. Life insurance companies issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, shall be allowed, in addition to the above, a deduction of 3¾ per centum of the mean of such reserve funds (not required by law) held at the beginning and end of the taxable year, as the Commissioner finds to be necessary for the protection of the holders of such policies only;

* * * * *

SEC. 204. INSURANCE COMPANIES OTHER THAN LIFE OR MUTUAL.

* * * * *

(b) *Definition of Income, Etc.*—In the case of an insurance company subject to the tax imposed by this section—

(1) *Gross Income.*—"Gross income" means the sum of (A) the combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners, and (B) gain during the taxable year from the sale or other disposition of property, and (C) all other items constituting gross income under section 22;

* * * * *

The corresponding provisions of the Revenue Act of 1936, c. 690, 49 Stat. 1648, are substantially identical with those of the 1934 Act above quoted.

Revised Statutes of Missouri, 1929, Vol. I:

CHAPTER 37.—INSURANCE

ARTICLE I.—INSURANCE DEPARTMENT

SEC. 5670. *Insurance department, general powers of.*—The insurance department shall be charged with the execution of all laws now in force, or which may be hereafter enacted, in relation to insurance and insurance companies doing business in this state. (R. S. 1919, § 6082.)

SEC. 5671. *Superintendent of insurance.*—The chief officer of said department shall be designated as the superintendent of the insurance department. * * *

* * * * *

SEC. 5680. *General duties of superintendent.*—It shall be the duty of the superintendent of the insurance department to file in his office and safely keep all books and papers required by law to be filed therein, to issue certificates of authority to transact insurance business in this state to any companies who have fully complied with the laws of this state, and to issue such other certificates as are required by the laws of this state in the organization of insurance companies and the transaction of the business of insurance, and generally to do and perform with justice and impartiality all such duties as are or may be imposed upon him by the laws regulating the business of insurance in this state; and every superintendent shall, upon retiring from office, deliver to his qualified successor the possession of his office, and all furniture, papers, and property belonging to the same. (R. S. 1919, § 6091.)

* * * * *

SEC. 5684. *Examination of companies.*—The superintendent of the insurance department shall examine and inquire into all violations of the insurance laws of the state, and examine the financial condition, affairs, and management of any insurance company incorporated by or doing business in this state, and inquire into and investigate the business of insurance transacted in this state, and require any company, its officers, agents, employes or attorneys, or other persons, to produce and may examine all its assets, contracts, books and papers; may compel the attendance before him, and may examine, under oath, its directors, officers, agents, employes, solicitors, attorneys, or any other person, in reference to its condition, affairs, management or business, or any matter relating thereto; may administer oaths or affirmations, and shall have power to summon and compel the attendance of witnesses, and to require and compel the production of records, books, papers, contracts or other documents by attachment, if necessary; and shall have the right to punish for contempt, by fine or imprisonment, or both, any person failing or refusing to obey any such summons or order of said superintendent. * * *

ARTICLE 4.—INSURANCE ON THE STIPULATED PREMIUM PLAN

* * * * *

SEC. 5762. *Corporations subject to this article—definition of stipulated premium company.*—Any corporation, company or association issuing policies or certificates promising money or other benefits to a member or policyholder, or upon his decease, to his legal representatives, or to beneficiaries designated by him, which money or benefit is derived from stipulated

premiums collected in advance from its members or policyholders, and from interest and other accumulations and wherein the money or other benefits so realized is applied to or accumulated solely for the use and purposes of the corporation as herein specified, and for the necessary expenses of the corporation, and the prosecution and enlargement of its business, and which shall comply with all the provisions of this article, shall be deemed to be engaged in the business of life insurance upon the stipulated premium plan and shall be subject only to the provisions of this article, except that the provisions of sections 5684 and 5685, Revised Statutes 1929, shall be applicable. It shall be unlawful for any corporation, company or association not having complied with the provisions of this article to use the term stipulated premium in its application or contracts, or to print or write the same in its policies or literature. (R. S. 1919, § 6172.)

* * * * *

SEC. 5778. *Annual report.*—The annual business of each and every corporation, company or association transacting business under the provisions of this article shall close on the 31st day of December of each year, and it shall, within sixty days thereafter, prepare and file in the office of the superintendent or other officer having supervision of insurance matters, a detailed statement, made upon blanks furnished by the insurance department, and verified under oath by the president and secretary of the company or association, giving all information in detail that the insurance department may require, so that its true financial condition may be known. (R. S. 1919, § 6188.)

U. S. GOVERNMENT PRINTING OFFICE: 1942